

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Civil Action No.
CV-13-4165

Plaintiff,

-against-

(Garaufis, J.)
(Tiscione, M.J.)

STATE OF NEW YORK,

Defendant.

-----X

RAYMOND O'TOOLE, et al.,

Civil Action No.
CV-13-4166

Plaintiffs,

-against-

(Garaufis, J.)
(Tiscione, M.J.)

ANDREW CUOMO, in his official capacity

as Governor of the State of New York, et al.,

Defendants.

-----X

STIPULATION AND ORDER

I. **INTRODUCTION**

1. On July 23, 2013, the parties to the above-referenced actions entered into a Stipulation and Order of Settlement providing for assessment and transition to community housing, as appropriate, of individuals with serious mental illness (SMI) who reside in New York City Impacted Adult Homes (the Adult Homes). The parties subsequently signed and filed with the Court an Amended Stipulation and Order of Settlement (the Agreement) on January 30, 2014, which the Court so ordered on March 17, 2014.

2. On January 16, 2013, before the execution of the Stipulation and Order of Settlement, the State of New York (the State) issued regulations restricting new admissions of individuals with SMI into the Adult Homes. 18 NYCRR § 487.4(c) and 487.13, 14 NYCRR §§ 580.6(c)(2) and 582.6(c)(2) as adopted January 16, 2013 (I.D. No. HLT-32-12-00020-A and I.D. No. OMH-32-12-00019-A).

3. Under Section O.1. of the Agreement, if a court of competent jurisdiction issues an order staying the enforcement of or invalidating any of the regulations, the parties to the Agreement “shall meet and confer in good faith to determine appropriate modifications to th[e] Agreement that would give effect to the original intent of the Parties.” Section O.1. further provides that if the parties cannot agree to appropriate modifications within 120 days, the entire Agreement is null and void.

4. On February 16, 2017, without objection from the Department of Health and Office of Mental Health, a Justice of the New York State Supreme Court in Albany, New York issued a Temporary Restraining Order (TRO) returnable on July 28, 2017 enjoining enforcement of one of the regulations. *John Doe v. Howard Zucker, et al.*, Index No. 07079/2016. This triggered the parties’ obligations under section O.1 of the Agreement.

5. On February 28, 2017, the New York State Attorney General (OAG) moved to withdraw as counsel for the defendants in the instant actions, *United States v. State of New York*, and *O’Toole et al. v. Cuomo et al.*, citing to events surrounding the issuance of the TRO. At a conference before the Court on March 22, 2017, the Court held the OAG motion “in abeyance” and granted the *O’Toole* plaintiffs’ motion for discovery regarding the OAG motion to withdraw and the circumstances surrounding the issuance of the TRO. The Court scheduled a hearing for May 17, 2017 to hear evidence regarding these two issues.

6. OAG hereby withdraws its motion to withdraw as counsel for the State in these two actions (*United States v. State of New York* and *O'Toole v. Cuomo*) and in *Residents and Families United To Save Our Adult Homes, et al. v. Howard Zucker et al.*, Civil Action No. CV-16-1683 (NGG). Constantine Cannon will serve as lead counsel, with OAG as co-counsel, in *United States v. State of New York* and *O'Toole v. Cuomo*.

7. The parties have subsequently met and conferred and intend to continue to discuss modifications to the Agreement. However, to avoid nullification of the Agreement and the delays in transitioning adult home residents who wish to reside in the community, they agree to the following:

II. AGREEMENT BETWEEN THE PARTIES

8. The parties hereby amend the Agreement to delete section O.1, and request that the Court so order a Second Amended Stipulation and Order of Settlement, attached as Exhibit A, which reflects this amendment. The entry of the Second Amended Stipulation and Order of Settlement does not modify or extend the time for the parties to accomplish the obligations set forth in the Agreement.

9. The parties agree to withdraw with prejudice all pending discovery requests concerning the OAG motion to withdraw and issuance of the state court TRO and hereby request that the Court cancel the May 17, 2017 hearing. Notwithstanding the foregoing, such discovery may be renewed upon good cause and substantial need and events that plaintiffs discover or that occur after the date this stipulation is entered into.

10. The parties agree to continue to negotiate in good faith regarding implementation of the Second Amended Stipulation and Order of Settlement and possible additional revisions to the Second Amended Stipulation and Order of Settlement, including, but not limited to, (1)

defining the scope of the class of individuals eligible for relief under the Agreement and of the defendants' obligations regarding in-reach, assessment, and transition of eligible individuals; (2) goals, benchmarks and timing for the assessment of adult home residents with SMI and the transition of those residents to supported and other community housing; and (3) improvements in the processes for in-reach, assessment and provision of services and supports to class members who have transitioned and will transition.

11. The State will, in good faith, take all appropriate legal action to defend against any direct or indirect challenges to the Second Amended Stipulation and Order of Settlement.

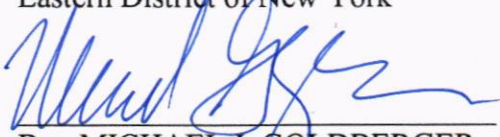
12. Nothing in this Stipulation or in the Second Amended Stipulation and Order of Settlement impairs the right of any party to enforce, seek relief from enforcement of, or seek or oppose modification of the Second Amended Stipulation and Order of Settlement.

13. The parties request that the Court cancel the trial scheduled in these cases for July 10, 2017.

For Plaintiff UNITED STATES OF AMERICA:

Dated: May 2, 2017

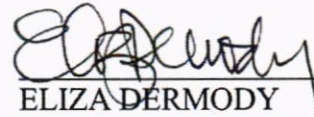
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Dated: May 2, 2017

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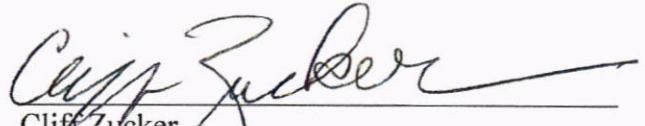
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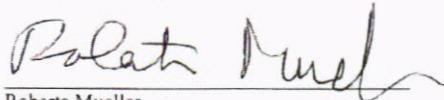
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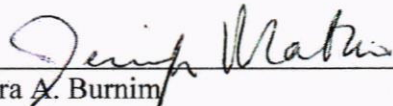
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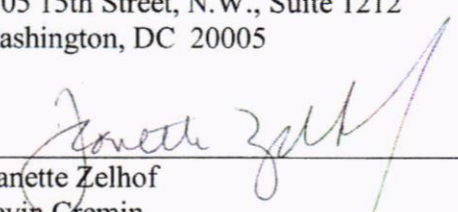
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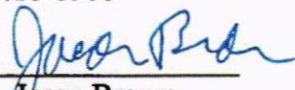
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Dated: 5/2/17

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SO ORDERED

Dated: Brooklyn, New York
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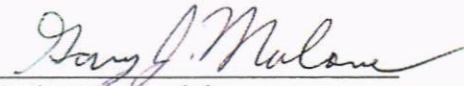
Nicholas G. Garaufis
United States District Judge

For Defendants STATE OF NEW YORK, ACTING COMMISSIONER KRISTIN M. WOODLOCK, THE NEW YORK STATE OFFICE OF MENTAL HEALTH, COMMISSIONER NIRAV R. SHAH, THE NEW YORK STATE DEPARTMENT OF HEALTH, and GOVERNOR ANDREW M. CUOMO:

Dated: May 4, 2017

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SO ORDERED

Dated: Brooklyn, New York
_____, 2017

Nicholas G. Garaufis
United States District Judge